The Planning Inspectorate

Appeal Decision

by Ken McEntee

a person appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 6 February 2019

Appeal ref: APP/B1740/L/18/1200213

[redacted]

- The appeal is made under section 218 of the Planning Act 2008 and Regulations 118 of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [redacted] against the deemed commencement date determined by New Forest District Council.
- The relevant planning permission to which the CIL relates is [redacted]
- Planning permission was granted on 10 May 2017.
- A Liability Notice was served on the appellants on 12 May 2017.
- A Demand Notice was served on the appellants on 5 June 2017.
- A revised Liability Notice was served on 26 July 2018.
- A revised Demand Notice was served on 26 July 2018.
- The description of the development is: [redacted]
- The alleged breaches of planning control are the failure to assume liability and the failure to submit a Commencement Notice before commencing works on the chargeable development.
- The deemed Commencement date determined by the Council is 28 April 2016.
- The outstanding surcharge for failure to assume liability is [redacted]
- The outstanding surcharge for failure to submit a Commencement Notice is [redacted]

Summary of decision: **The appeal on the ground made is allowed but the surcharges are upheld.**

Reasons for the decision

1. This case presents a situation where the original planning permission[1] was granted on 11 March 2014 when a CIL charging schedule had not been adopted for New Forest District Council (the Collecting Authority). However, it appears demolition of the existing dwelling took place, which did not form part of the planning permission. Consequently, it follows that development was not carried out in accordance with the approved scheme and retrospective permission was required as a result. However, when retrospective permission was subsequently granted on 10 May 2017 a CIL charging schedule was now in force and as a result the development automatically became CIL liable, irrespective of whether or not the demolition works took place when there was no CIL schedule in place. As neither

[redacted]

https://www.gov.uk/government/organisations/planning-inspectorate

an Assumption of Liability Notice nor a Commencement Notice was submitted, the relevant surcharges were imposed.

2. Regulation 68 explains that a Collecting Authority must determine the day on which a chargeable development was commenced if it has not received a Commencement Notice in respect of the chargeable development but has reason to believe it has been commenced, which it clearly has in this case due to the demolition works. With that in mind, CIL Regulation 7(2) explains that development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land. However, Regulation 7(3) explains that this general rule is subject to provisions, such as that stated in Regulation 7(5)(a) where development has already been carried out then granted planning permission under section 73A of the Town & Country Planning Act. In such cases, development is to be treated as commencing on the day planning permission for that development is granted or modified. Therefore, as retrospective permission was granted in this case, the general rule in Regulation 7(2) is displaced and the correct commencement date should be taken as the date of the grant of planning permission, which in this case was 10 May 2017.

3. In these circumstances, the appeal under Regulation 118 succeeds and, in accordance with Regulation 118(4), the Demand Notice ceases to have effect. As required by Regulation 69(4), the Council must now serve a revised Demand Notice with a revised deemed commencement date of 10 May 2017.

4. However, while the appeal under Regulation 118 succeeds, I see no good reason to use my discretionary powers under Regulation 118 (6) to quash the surcharges imposed, for the reasons explained in paragraph 1 above.

Formal decision

5. For these reasons, the appeal is allowed but the surcharges of [redacted] are upheld.

K McEntee